

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule

Gail Horlick, MSW, JD

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The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule

- Administrative Simplification provisions address privacy and security
- Require the development of:
 - Privacy legislation or regulations
 - Standards for transactions and code sets
 - Standards for security



HIPAA Privacy Requirements (1)

- Congress required to enact federal privacy legislation by 8/99 or Secretary of Health and Human Services (HHS) was to issue regulations
 - Congress did not meet the deadline
- 11/99: Draft privacy regulations in Federal Register
 - over 52,000 comments received
 - Less than one half from consumers or representatives



HIPAA Privacy Requirements (2)

- 12/28/00: Final Privacy rule in Federal Register
- Compliance date 4/14/03
 - ▶ small plans 4/14/04
- 2/01: Secretary HHS reopens privacy rule for 30 day comment period



Key Provisions Of The HIPAA Privacy Rule

- Access
 - ▶ Gives individuals the right to inspect, copy, and request amendment to medical record
 - ▶ Only 28 states have laws that provide access to medical record
- Disclosure
 - ▶ Governs the use and disclosure of individually identifiable information
 - ▶ Consent required for disclosures for treatment, payment, and health care operations



Scope Of Privacy Rule (1)

- Scope of privacy rule is narrower than scope of comprehensive privacy legislation
- Rule applies to Covered Entities (CE):
 - Health plans
 - Health care clearinghouses
 - Health care providers (those who transmit certain health claims information electronically) (§164.104)



Scope Of Privacy Rule (2)

Rule applies indirectly to Business Associates (BA):

- BA perform certain functions or activities on behalf of CE
 - ▶ e.g. legal or accounting services, utilization review, claims processing
- BA must be bound by privacy rule through written contract or memo of understanding with CE (§160.103)



Scope of Privacy Rule (3)

- Rule governs the use and disclosure of Protected Health Information (PHI)
 - PHI:
 - ▶ Relates to person's physical or mental health or provision or payment for health care
 - ▶ Identifies, or could be used to identify person who is subject of information
 - ▶ Is created or received by CE
 - ▶ Is transmitted or maintained in any medium
- (§164.501)



HIPAA Privacy Rule

Protects:

- all individually identifiable health information
- in any form, electronic or non-electronic
- that is held or transmitted by a covered entity



Who Is Not Covered By The HIPAA Privacy Rule?

- Scope of privacy rule is limited by HIPAA
- Non covered entities include:
 - Life insurance carriers
 - Worker's compensation carriers
 - Researchers
 - Some employers

Implications Of Privacy Rule For Public Health

- Intent of law and rule
- Disclosure to public health authorities
- Impact of privacy rule on registries

Intent Of Rule Regarding Public Health

Analysis of comments in preamble to rule refers to mandate in HIPAA:

“Nothing in this part shall be construed to invalidate or limit the authority, power or procedures established under any law providing for the reporting of disease or injury, child abuse, birth or death, public health surveillance, or public health investigation or intervention.”



Disclosure to Public Health (1)

- Providers who transmit information electronically are CE
- CE must obtain written patient consent or authorization for all uses and disclosures (treatment, payment, health care operations) EXCEPT those specifically listed
- Consent or authorization is NOT required for uses and disclosures:
 - required by law
 - for public health activities



Disclosure To Public Health (2)

Providers may disclose PHI to public health authorities without consent or authorization:

- If reporting is mandated by law
- For certain public health activities and purposes



Disclosure To Public Health (3)

Provider may disclose PHI for activities and purposes.....:

- to a public health authority that is authorized by law to collect or receive such information
- for the purpose of preventing or controlling disease,....the conduct of public health surveillance, public health investigations, and public health interventions...
(§164.512(b)(1)(i))



Public Health Authority

Public health authority means:

- an agent or authority of the US, a State, a territory, a political subdivision of a State or territory, or an Indian tribe,
- or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency, or its contractors or persons or entities to whom it has granted authority,
- that is responsible for public health mandates as part of its official mandate (§164.501)



Relationship To Other Laws

- Privacy rule preempts state laws that are contrary to rule (§160.203)
 - ▶ Limited exceptions such as fraud and abuse
 - ▶ Does not preempt more stringent state laws
 - ▶ Provides a baseline of protection
- Family Education Rights and Privacy Act (FERPA) records excluded (§164.501)



Implications For Registries

Preliminary analysis suggests:

- Most registries not likely to be CE
- Most registries will not be bound by privacy rule
- Privacy rule will not impact disclosure of information from registry that are not CE
- Registries will hold PHI
- Registries may have other reasons for compliance



Other HIPAA Implications

- HIPAA security rule:
 - ▶ May apply to all electronic information systems including registries
 - ▶ Will coordinate with privacy rule
- HIPAA standards may be viewed as best practices

Issues To Be Addressed

- Are there any circumstances where registries will be considered CE?
- Will Medicaid operation of registries impact registries' status under the HIPAA privacy rule?
- How does the privacy rule impact state and local health departments that provide direct service?
- What will providers (CE) expect from registries?



Contact Information

Gail Horlick, M.S.W., J.D.

Program Analyst

CDC National Immunization Program

1600 Clifton Rd. NE, MS E-62

Atlanta, Ga. 30333

phone: 404-639-8345

fax: 404-639-8171

email: gyh6@cdc.gov

